

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AARON DUBOIS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

No. CV-11-3118-RHW

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 18, 22. Telephonic oral argument was held on November 5, 2013. Plaintiff was represented by D. James Tree. Defendant was represented by Summer Stinson.

Plaintiff brings this action seeking judicial review of the Commissioner's final decision, under 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3), denying his applications for Supplemental Security Income ("SSI") and Disability Insurance Benefits ("DIB"). After reviewing the administrative record, parties' briefs, and hearing oral arguments, the Court grants Defendant's Motion for Summary Judgment, denies Plaintiff's Motion for Summary Judgment, and directs entry of judgment in favor of Defendant.

**I. Statement of Facts**

Plaintiff was born on November 21, 1975 and was thirty-five years old at the time of the hearing. Tr. 127, 28, 41. He obtained an Associate Degree from Yakima Valley Community College and a Bachelor of Science Degree in

1 Information Technology from the University of Phoenix, an online university. Tr.  
 2 278, 372. He has worked as a cashier, nursery worker, dish washer, computer  
 3 consultant, and owned his own computer repair business. Tr. 43-46, 51-53, 144.  
 4 He lives with his parents.

5 Plaintiff states he is unable to work because of his back pain, Asperger's  
 6 disorder, impulse control disorder, bipolar disorder, anxiety disorder, depression,  
 7 and attention disorder.

## 8 **II. Issues for Review**

9 Plaintiff alleges the ALJ erred on four grounds. First, Plaintiff asserts the  
 10 ALJ improperly evaluated the medical and psychological opinion evidence.  
 11 Second, Plaintiff alleges the ALJ improperly rejected his subjective complaints.  
 12 Third, Plaintiff contends the ALJ improperly rejected the lay witness testimony.  
 13 Finally, Plaintiff asserts the ALJ failed to meet his burden at step five of the five-  
 14 step sequential process.

## 15 **III. Discussion**

### 16 **A. The ALJ Properly Evaluated the Medical and Psychological Opinion** 17 **Evidence**

18 Plaintiff argues the ALJ improperly rejected the opinions of Dr. Bhaskaran,  
 19 Dr. Schneider, and Mr. Anderson. At oral argument, Plaintiff argued that these  
 20 opinions should be credited because the ALJ failed to give adequate reasons for  
 21 rejecting them.

22 To properly reject the opinions of Dr. Bhaskaran and Dr. Schneider, the ALJ  
 23 must provide specific, legitimate reasons based on substantial evidence in the  
 24 record because Dr. Bhaskaran and Dr. Schneider are treating and examining  
 25 physicians. *Turner v. Comm'r of Soc. Sec. Admin.*, 613 F.3d 1217, 1222 (9th Cir.  
 26 2010). To meet this burden, the ALJ must set out a detailed and thorough summary  
 27 of the facts and conflicting clinical evidence, stating his interpretation thereof, and  
 28 make findings. *Magallanes v. Bowen*, 881 F.2d 747, 751-55 (9th Cir. 1989).

1 However, to reject Mr. Anderson's opinion, the ALJ need only provide "germane"  
2 reasons since he is not a physician but a non-medical source. SSR 06-03p; *Bayliss*  
3 *v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005).

4 Despite Plaintiff's argument, the ALJ satisfied his burden as to the medical  
5 and psychological opinion evidence by setting forth adequate reasons based on  
6 substantial evidence in the record. First, as to Dr. Bhaskaran's opinion, the ALJ  
7 rejected his opinion because the ALJ found that it was inconsistent with the  
8 opinions of the State Physician's opinions, Plaintiff's reported activities, and the  
9 medical record as a whole. Tr. 25. These reasons are specific and legitimate; thus,  
10 the ALJ properly discounted the opinion of Dr. Bhaskaran. *See Orn v. Astrue*, 495  
11 F.3d 625, 631 (9th Cir. 2007) (holding that ALJ may reject doctor's assessment  
12 that is inconsistent with the record as a whole); *Tonapetyan v. Halter*, 242 F.3d  
13 1144, 1149 (9th Cir. 2001) (holding that contrary opinions of examining and non-  
14 examining physicians serves as specific and legitimate reasons); *Morgan v.*  
15 *Comm'r. of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (holding that ALJ  
16 may reject medical opinions that are inconsistent with reported activities).

17 Second, as to Dr. Schneider, the ALJ rejected his opinion because the ALJ  
18 found his opinion was inconsistent with Plaintiff's reported activities, the opinions  
19 of Mr. Perez, Dr. Beaty, Dr. Kester, and the record as a whole. Tr. 25. These  
20 reasons are specific and legitimate; therefore, the ALJ properly rejected Dr.  
21 Schneider's opinion.

22 Third, as to Mr. Anderson's opinion, the ALJ rejected his opinion because  
23 the ALJ found that his opinion was inconsistent with the opinions of Mr. Perez, Dr.  
24 Beaty, Dr. Kester and the medical record as a whole. Tr. 26. These reasons are  
25 germane, thus, the ALJ's rejection of Mr. Anderson's opinion was proper.

26 Therefore, the ALJ did not err in rejecting Dr. Bhaskaran's, Dr. Schneider's,  
27 or Mr. Anderson's opinions, as he provided specific and legitimate reasons for  
28

1 rejecting the physician's opinions and germane reasons for rejecting Mr.  
2 Anderson's opinions.

3 **B. The ALJ Properly Rejected Plaintiff's Subjective Complaints**

4 Plaintiff challenges the ALJ's negative credibility assessment and argues the  
5 ALJ improperly rejected his subjective complaints by failing to put forth clear and  
6 convincing reasons. Specifically, at oral argument, Plaintiff argued that the ALJ's  
7 reliance on Plaintiff's daily activities was improper because only those activities  
8 that are transferable to a work setting are proper to consider in discrediting  
9 Plaintiff.

10 In deciding whether to admit a claimant's subjective symptom testimony, the  
11 ALJ must engage in a two-step analysis. *Baston v. Comm'r. of Soc. Sec. Admin.*,  
12 359 F.3d 1190, 1196 (9th Cir. 2004). If the requirements of the two-step analysis  
13 are satisfied and there is no evidence of malingering, the ALJ may reject the  
14 claimant's testimony by stating clear and convincing reasons for doing so. *Id.*  
15 General findings are insufficient, as the ALJ must identify what testimony is not  
16 credible and what evidence undermines the claimant's complaints. *Berry v. Astrue*,  
17 622 F.3d 1228, 1234 (9th Cir. 2010). In weighing credibility, the ALJ may  
18 consider inconsistencies in the claimant's testimony or between his testimony and  
19 his daily activities and his work record. *Thomas v. Barnahrt*, 278 F.3d 947, 958-59  
20 (9th Cir. 2002)

21 Here, the ALJ properly rejected Plaintiff's subjective complaints by  
22 providing clear and convincing reasons for doing so and identifying which  
23 testimony is not credible and what evidence undermined Plaintiff's complaints.  
24 With respect to credibility, the ALJ held that Plaintiff's reported activities are  
25 inconsistent with his alleged limitations and symptoms. Tr. 23. To support his  
26 finding, the ALJ relied on facts such as Plaintiff earning an Associate's Degree,  
27 pursuing a Bachelor's Degree, preparing his own meals, completing household  
28 chores, going outside alone, engaging in recreational activities, shopping, attending

1 church functions, having friends, and his previous work history. Tr. 23-24. These  
2 are clear and convincing reasons because it was reasonable for the ALJ to conclude  
3 that those activities are transferable to a work setting. *See Thomas*, 278 F.3d at  
4 960 (holding the ALJ may consider claimant's work history in assessing claimant's  
5 credibility); *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (holding that  
6 reliance on activities that claimant spends a substantial part of his day engaged in  
7 involving the performance of physical functions that are transferable to a work  
8 setting was proper in discrediting claimant's credibility). Thus, the ALJ properly  
9 rejected the Plaintiff's subjective complaints.

### 10 **C. The ALJ Found Plaintiff's Mother's Testimony Credible**

11 Plaintiff next argues the ALJ erred by improperly rejecting his mother's lay  
12 witness testimony. Plaintiff contends that the ALJ failed to provide specific  
13 reasons for rejecting his mother's testimony and failing to include the limitations  
14 that she noted in his Residual Functional Capacity ("RFC") determination or  
15 propounded hypothetical question to the vocational expert (the "VE"). Instead, the  
16 Plaintiff contends that the ALJ "cherry-picked" her testimony to overstate  
17 Plaintiff's abilities while ignoring her statements that demonstrated less capability.

18 In determining whether a claimant is disabled, an ALJ must consider lay  
19 witness testimony. *Stout v. Comm'r. of Soc. Sec. Admin.*, 454 F.3d 1050, 1053  
20 (9th Cir. 2006). Lay witness testimony cannot be disregarded without comment.  
21 *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). To discount lay witness  
22 testimony, the ALJ must give reasons germane to each witness. *Id.*

23 Here, the ALJ did not discredit Plaintiff's mother's testimony. Instead, the  
24 ALJ gave "considerable consideration" to her testimony because the ALJ found it  
25 consistent with Plaintiff's reported activities. Tr. 26. Thus, Plaintiff's argument  
26 pertaining to the ALJ's failure to provide specific reasons for rejecting his  
27 mother's testimony fails, as her testimony was not discredited.

1 Further, it is true, as Plaintiff argued at oral argument, that the ALJ did not  
2 specifically address Plaintiff's mother's noted limitations regarding his social skills  
3 and concentration deficits. Tr. 26. However, those limitations were accurately  
4 reflected in the ALJ's RFC determination by limiting Plaintiff, from a mental  
5 standpoint, to simple, routine, and repetitive tasks that are performed away from  
6 the public. Tr. 22. Therefore, the ALJ did account for the mother's noted  
7 limitations in his RFC assessment that were supported by substantial evidence in  
8 the record.

9 **D. The ALJ Properly Satisfied His Burden At Step Five of the Five-Step**  
10 **Sequential Evaluation Process**

11 Finally, Plaintiff argues the ALJ failed to meet his burden at step five of the  
12 five-step sequential evaluation process because the ALJ relied upon testimony  
13 from the VE that was provided in response to an incomplete hypothetical. Plaintiff  
14 argues the hypothetical was incomplete because it failed to account for limitations  
15 that the ALJ improperly rejected.

16 At step-five of the evaluation process, the burden shifts to the ALJ to  
17 demonstrate that the claimant is not disabled and that he can engage in some type  
18 of gainful activity that exists in "significant numbers" in the national economy.  
19 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995). An ALJ may satisfy his  
20 burden by propounding a hypothetical to a VE that is based on medical  
21 assumptions supported by substantial evidence in the record. *Roberts v. Shalala*, 66  
22 F.3d 179, 184 (9th Cir. 1995). To be complete, the hypothetical must include all of  
23 the claimant's functional limitations that are supported by the record. *Flores v.*  
24 *Shalala*, 49 F.3d 562, 570 (9th Cir. 1995). However, an ALJ's hypothetical need  
25 not include all claimed impairments. *Magallanes*, 881 F.2d at 756.

26 Here, the ALJ satisfied his burden at step-five of the evaluation process  
27 because his hypothetical included all of Plaintiff's limitations that are supported by  
28 substantial evidence in the record. Plaintiff's argument assumes that the ALJ





1 4. The District Court Executive is directed to enter judgment in favor of  
2 Defendant and against Plaintiff.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
4 Order, forward copies to counsel, and **close the file**.

5 **DATED** this 15<sup>th</sup> day of November, 2013.

6  
7 *s/Robert H. Whaley*  
8 ROBERT H. WHALEY  
9 United States District Judge  
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